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Customs (Amendment) Bill

Bill No. 26/2018.

Read the first time on 17 May 2018.

A BILL

intituled

An Act to amend the Customs Act (Chapter 70 of the 2004 Revised Edition) and to make a related amendment to the Road Traffic Act (Chapter 276 of the 2004 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.—(1) This Act is the Customs (Amendment) Act 2018 and, except for section 19(1), (2) and (3), comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 (2) Section 19(1), (2) and (3) is deemed to have come into operation on 20 February 2017.

Amendment of section 2

2. Section 2 of the Customs Act is amended by deleting the word “petroleum” in paragraph (a) and substituting the words “motor fuel”.

10 Amendment of section 3

3. Section 3(1) of the Customs Act is amended —

(a) by deleting the definition of “beer”;

(b) by deleting the definition of “motor fuel” and substituting the following definition:

15 ““motor fuel” means any fuel used in the propulsion of any conveyance;”;

(c) by deleting the words “or by any other written law for the time being in force in Singapore” in the definition of “prohibited goods”.

20 Amendment of section 5

4. Section 5(1) of the Customs Act is amended by deleting the words “, with the approval of the Minister,”.

Amendment of section 13

5. Section 13 of the Customs Act is amended —

25 (a) by inserting, immediately after subsection (2), the following subsection:

“(2A) An exemption under subsection (2)(a) need not be published in the *Gazette*.”; and

- (b) by inserting, immediately after the words “such conditions” in subsection (3), the words “(including, for an exemption, conditions subsequent)”.

Amendment of section 14

6. Section 14 of the Customs Act is amended by deleting subsection (1) and substituting the following subsections: 5

“(1) If —

(a) customs duty or excise duty is not paid on any goods by reason of an exemption granted under section 13; and 10

(b) any condition to which the exemption is subject is contravened,

then the goods, upon the contravention, become liable to customs duty or excise duty in accordance with the rate and valuation (if any) specified in the exemption. 15

(1A) For the purpose of subsection (1), the rate and valuation (if any) specified in the exemption must be those —

(a) that would have applied if not for the exemption; or

(b) in force on the date on which the condition of the exemption is contravened.”. 20

Amendment of section 17

7. Section 17 of the Customs Act is amended —

(a) by deleting the words “annual or half-yearly rate” in subsection (2)(b) and substituting the words “tax period”;

(b) by deleting subsection (3); 25

(c) by deleting subsection (5) and substituting the following subsections:

“(5) Subject to subsection (5A), a person who for any period keeps a motor vehicle in respect of which the special tax has at any time become chargeable is, whether or not the motor vehicle is still a 30

mechanically-propelled vehicle during the period, liable to pay the special tax on the motor vehicle for that period.

5 (5A) The period mentioned in subsection (5) for which the person is liable to pay the special tax, does not include any period notified by the person to the Registrar under the Road Traffic Act (Cap. 276) as a period when the motor vehicle will not be used or kept on a public road (called in this section the notified period).

10 (5B) However, the person is not exempt from liability to pay the special tax by virtue of subsection (5A) if, at any time during the notified period, the motor vehicle is used or kept on a public road —

(a) by the person; or

(b) with the consent of the person,

and there is no vehicle licence in force for the motor vehicle at that time.”;

20 (d) by deleting paragraph (b) of subsection (6) and substituting the following paragraph:

“(b) at any time during the notified period.”; and

(e) by inserting, immediately after subsection (8), the following subsection:

25 “(9) In this section, “tax period” means the annual or half-yearly period by reference to which the special tax is chargeable under this section.”.

New sections 17A and 17B

30 **8.** The Customs Act is amended by inserting, immediately after section 17, the following sections:

“Exemption from, and other changes in liability to, special tax

17A.—(1) The Minister may —

(a) prescribe an exemption from section 17 (including from the special tax chargeable under section 17 or any part of the special tax), for any motor vehicle according to class, category, description or use; or

(b) exempt, in any particular case, any motor vehicle from section 17 (including from the special tax or part of the special tax).

(2) The Minister may prescribe such conditions (including conditions subsequent) that the Minister thinks fit on an exemption under subsection (1), and the special tax becomes payable if any such condition is contravened.

(3) An exemption under subsection (1)(b) need not be published in the *Gazette*.

(4) Where the Minister prescribes under section 17(2) a new rate of special tax (called in this section the new rate) in place of an existing rate (called in this section the old rate), the Minister may further prescribe under section 17(2) that the new rate —

(a) only applies to tax periods that commence after the time the regulations prescribing the new rate come into operation (called in this section the commencement time); or

(b) applies not only for the tax periods mentioned in paragraph (a), but also to any current tax period.

(5) Where, in accordance with subsection (4)(b), the new rate applies to a current tax period in respect of a motor vehicle, then —

(a) if the old rate is higher than the new rate, the special tax for that current tax period is reduced by the amount in subsection (6); and

(b) if the old rate is lower than the new rate, the special tax for that current tax period is increased by the amount in subsection (6).

(6) For the purpose of subsection (5), the amount is $(A - B) \times C$, where —

(a) A is the higher of the following amounts:

(i) the special tax that would have been payable for the whole of the current tax period at the old rate;

(ii) the special tax that would have been payable for the whole of the current tax period at the new rate;

(b) B is the lower of the following amounts:

(i) the special tax that would have been payable for the whole of the current tax period at the old rate;

(ii) the special tax that would have been payable for the whole of the current tax period at the new rate; and

(c) C is the proportion which the part of the current tax period that starts from the commencement time up to the end of the period, bears to the whole of the period.

(7) For the purpose of this section and section 17, the Minister may prescribe the following:

(a) where there is an overpayment of the special tax on a motor vehicle due to an exemption from, or a reduction in the rate of, the special tax, or for any other reason —

(i) the time when the refund may be given; and

(ii) the manner in which the refund may be given, including by any or a combination of any of the following:

- (A) as a rebate or reduction of any amount of the special tax that is payable or remains unpaid for any tax period in respect of the motor vehicle;
- (B) by setting off any amount of the refund against any tax, levy or fee payable under the Road Traffic Act (Cap. 276) in respect of the motor vehicle; 5
- (b) where the special tax becomes payable because of a breach of a condition subsequent of an exemption or pursuant to section 17(5B), or additional special tax is payable due to an increase in the rate of special tax — 10
- (i) the time when the special tax must be paid by the person liable for the same; and
- (ii) the manner of the payment, including by way of setting off any amount of the payment against any sum due and owing to the person under this Act or the Road Traffic Act; 15
- (c) any matter necessary for or incidental to the administration of this section and section 17. 20
- (8) The Minister may, for the purposes of subsections (1), (2), (4) and (7), prescribe different provisions in relation to motor vehicles of different classes, categories or descriptions or motor vehicles used for different purposes.
- (9) Despite anything in the Road Traffic Act, any tax, levy, fee or sum under that Act against which a set-off is effected pursuant to regulations made under subsection (7)(a)(ii) or (b)(ii), is treated as having been paid to the extent of the set-off. 25
- (10) Regulations made for the purposes of subsection (7)(b) do not affect the operation of section 18. 30
- (11) Section 19 does not apply to a reduction in liability for special tax under this section or section 17, or to any refund arising out of the reduction.

(12) To avoid doubt, section 13 does not apply to any special tax chargeable under section 17.

(13) In this section —

“current tax period” means a tax period in which a commencement time falls;

“tax period” has the same meaning as in section 17(9).

Presumptions relating to special tax

17B.—(1) For the purpose of section 17(5), it is presumed, until the contrary is proved, that a person keeps a motor vehicle if it is proved —

(a) for a motor vehicle registered under the Road Traffic Act (Cap. 276), that the person is, at the material time, recorded as the owner of that motor vehicle in a register of vehicles maintained by the Registrar for the purposes of section 10 of that Act;

(b) for a motor vehicle the registration of which under the Road Traffic Act is cancelled or has lapsed under that Act, that the person is last recorded as the owner of that motor vehicle in such register of vehicles; or

(c) for a motor vehicle that is not registered under the Road Traffic Act and is not a motor vehicle mentioned in paragraph (b), that the person has a legal right to possession of the motor vehicle (including any person who has the use of the motor vehicle under a lease or hire-purchase agreement, but not the lessor while the motor vehicle is being leased under any such agreement).

(2) For the purpose of section 17(5B), the consent mentioned in that provision is presumed to have been given unless the contrary is shown.”.

Amendment of section 18

9. Section 18 of the Customs Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) Any sum payable in respect of the special tax levied under section 17 or 17A is considered to be in arrears for the purposes of this section and may be recovered in the manner provided in this Act, if —

- (a) the sum remains due and unpaid on the day when it should have been paid in advance under section 17(2); or 5
- (b) the sum remains due and unpaid on the day when it should have been paid under regulations made for the purpose of section 17A(7)(b)(i).” 10

Repeal and re-enactment of section 19

10. Section 19 of the Customs Act is repealed and the following section substituted therefor:

“Claims for duties, taxes, fees and other charges overpaid or erroneously paid

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19.—(1) Except as provided in this section, no person is entitled to any refund or return of any money that —

- (a) was overpaid or erroneously paid as customs duties, excise duties, taxes, fees or other charges under this Act; or 20
- (b) was erroneously collected for the composition of offences under this Act.

(2) A person who overpaid or erroneously paid, or who was the subject of any erroneous collection, mentioned in subsection (1) may make a claim in writing to the Director-General for the refund or return of any money overpaid, erroneously paid or erroneously collected. 25

(3) A refund or return of the money to a person under subsection (2) may be made only if —

- (a) the person makes the claim within 5 years after the overpayment, erroneous payment or erroneous collection; and 30

(b) the Director-General is satisfied of the overpayment, erroneous payment or erroneous collection.”.

Amendment of section 20

11. Section 20 of the Customs Act is amended —

5 (a) by deleting the words “to him on demand being made within one year from the date of the short levy or refund” in subsection (1) and substituting the words “, to the Director-General on a valid demand being made”; and

10 (b) by inserting, immediately after subsection (1), the following subsections:

“(1A) A demand is valid under subsection (1) if it satisfies the following:

(a) it is in writing;

15 (b) it is made within 5 years after the date of payment of the duty, tax, fee or other charge stated in the demand as having been short levied or erroneously refunded;

(c) it specifies —

20 (i) the amount of the short levy or erroneous refund that the Director-General requires to be paid or repaid; or

25 (ii) the circumstances or the goods in relation to which the Director-General has reason to believe the short levy or erroneous refund arose.

30 (1B) Subsection (1A)(b) does not apply if the short levy or erroneous refund was the result of fraud or evasion on the part of the person liable to pay the short levy, or who claimed for or to be entitled to the refund erroneously made, as the case may be.”.

Amendment of section 34

12. Section 34(2) of the Customs Act is amended —

- (a) by deleting the words “or petroleum for use in the propulsion of a motor vehicle or an aircraft” in paragraph (d) and substituting the words “for use in the propulsion of any motor vehicle, aircraft or vessel”; 5
- (b) by deleting the word “and” at the end of paragraph (d)(i)(B); and
- (c) by inserting the word “and” at the end of sub-paragraph (ii) of paragraph (d), and by inserting immediately thereafter 10
the following sub-paragraph:
 - “(iii) in relation to a vessel, is carried in the fuel supply tank of the vessel;”.

Amendment of section 38

13. Section 38 of the Customs Act is amended by inserting, 15
immediately after subsection (1), the following subsection:

“(1A) To avoid doubt, the dutiable goods that may be specified in the notification include goods whose import or export is prohibited, absolutely or conditionally, under any other written law.”. 20

Amendment of section 42

14. Section 42 of the Customs Act is amended —

- (a) by deleting subsection (3) and substituting the following subsections: 25
 - “(3) Despite the provisions of any written law to the contrary, where any dutiable goods have been received for storage by —
 - (a) the authority administering a free trade zone; or

- (b) the occupier or operator of the premises in which the goods are stored within a free trade zone,

5 then, the authority, occupier or operator is liable to pay the customs duty or excise duty on such of the goods as are not accounted for to the satisfaction of a senior officer of customs, as if those goods had been imported.

10 (3A) Despite the provisions of any written law to the contrary, where any dutiable goods landed in a free trade zone are used or consumed in the free trade zone, the following persons are liable to pay the customs duty or excise duty on the goods so used or consumed, as if the goods had been imported:

- 15 (a) subject to paragraph (b), every relevant person mentioned in subsection (3B) at whose risk the goods remained under subsection (1);

- 20 (b) if, at the time of their use or consumption, the dutiable goods were stored by —

(i) the authority administering the free trade zone; or

(ii) the occupier or operator of any premises within the free trade zone,

25 the authority, occupier or operator, as the case may be.

(3B) In subsection (3A), a relevant person is —

- 30 (a) in the case of a vessel — the master, owner or agent or person authorised under section 39(2); and

- (b) in the case of an aircraft — the pilot, owner or agent or person authorised under section 39(2).

(3C) For the purpose of calculating the customs duty or excise duty under subsections (3) and (3A), the rate of duty and the valuation, if any, applicable to the goods are those in force on the date the goods were brought into the free trade zone.”; and

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(b) by inserting, immediately after the words “unaccounted for” in the section heading, the word “, etc.”.

Amendment of section 136

15. Section 136 of the Customs Act is amended by inserting, immediately after subsection (2), the following subsection:

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“(3) To avoid doubt, written permission under subsection (1) may be given to enable a person to leave Singapore without contravening that subsection, after the person has attempted to leave Singapore in contravention of that subsection, and without affecting any liability of the person for such attempt.”.

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Miscellaneous amendments

16.—(1) The Customs Act is amended by inserting, immediately after the word “Director-General” in sections 11 and 136(1), the words “or an officer of customs authorised by the Director-General for the purpose of this section”.

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(2) Section 34(2) of the Customs Act is amended by inserting, immediately after the word “Director-General” in paragraph (c)(ii), the words “or an officer of customs authorised by the Director-General for the purpose of this subsection”.

Related amendment to Road Traffic Act

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17. Section 17(2) of the Road Traffic Act (Cap. 276) is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) for any period in respect of which he has, in accordance with the rules, given notice to the Registrar that the vehicle will not be used or kept on a public road during that period; and”.

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Validations

18. The following amounts are deemed to be and to have always been validly collected, and no legal proceedings may be instituted on or after 17 May 2018 in any court of law for or on account of or in respect of any such collection:

(a) any amounts collected before the date of commencement of section 6 of this Act as, or purportedly as, the customs duty or excise duty imposed under section 14 of the Customs Act;

(b) any amounts collected on or after 19 December 2012 and before the date of commencement of this section as, or purportedly as, any fee or charge under the Customs (Miscellaneous Fees and Rates) Regulations 2012 (G.N. No. S 634/2012) in relation to any non-dutiable goods;

(c) any amounts collected before the date of commencement of section 7 of this Act as, or purportedly as, the special tax on a motor vehicle that is used or kept on a road during any period which the person liable to pay the special tax notified the Registrar under the Road Traffic Act (Cap. 276) as a period during which the motor vehicle would not be so used or kept;

(d) any amounts collected before the date of commencement of section 17 of this Act as, or purportedly as, any tax under the Road Traffic Act on a vehicle that is used or kept on a public road during any period which the person liable to pay the tax notified the Registrar under the Road Traffic Act as a period during which the vehicle would not be so used or kept.

Saving and transitional provisions

19.—(1) The Minister may make regulations for refunds for any overpayment of the special tax arising from the change in the rate of the special tax that took effect on 20 February 2017 at 4.45 p.m.

(2) Regulations made under subsection (1) —

(a) may be brought into operation on a date that is on or after 20 February 2017; and

(b) may provide for the following:

(i) the computation of the overpayment as if the change in rate took effect upon the expiry of 19 February 2017;

(ii) the time of the giving of the refund;

(iii) the manner in which the refund may be given in respect of any motor vehicle, including by any or a combination of any of the following:

(A) as a rebate or reduction of any amount of the special tax that is payable or remains unpaid for any tax period (within the meaning of section 17A of the Customs Act as amended by this Act) in respect of the motor vehicle;

(B) by setting off any amount of the refund against any tax, levy or fee payable under the Road Traffic Act (Cap. 276) in respect of the motor vehicle.

(3) Despite anything in the Road Traffic Act, any tax, levy or fee under that Act against which any set-off is effected pursuant to the regulations made under subsection (1), is treated as having been paid to the extent of the set-off.

(4) Section 19 of the Customs Act as in force on the date of commencement of section 10 of this Act only applies where the overpayment or erroneous payment is made on or after that date, and section 19 of the Customs Act as in force immediately before that date continues to apply where the overpayment or erroneous payment was made before that date.

(5) Section 20 of the Customs Act as in force on the date of commencement of section 11 of this Act only applies where the customs duty, excise duty, tax, fee or other charge is short levied or erroneously refunded on or after that date, and section 20 of the

Customs Act as in force immediately before that date continues to apply where the duty, tax, fee or other charge was short levied or erroneously refunded before that date.

- 5 (6) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Customs Act (Cap. 70), and to make a related amendment to the Road Traffic Act (Cap. 276).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to clarify where the Act does not apply in relation to “motor fuel” (and not only “petroleum”).

Clause 3 amends section 3(1) —

- (a) to delete the definition of “beer” as the term is no longer used in the Act;
- (b) to extend the definition of “motor fuel” to cover all types of fuel used to propel any conveyance; and
- (c) to amend the definition of “prohibited goods” so that goods are not prohibited goods for the purposes of the Act simply by virtue of their being prohibited goods under other written laws.

Clause 4 amends section 5(1) to remove the requirement that the Director-General of Customs (the Director-General) must obtain the approval of the Minister before the Director-General can delegate powers conferred on the Director-General to any senior officer of customs.

Clause 5 inserts a new subsection (2A) in section 13 to clarify that particular exemptions need not be published in the *Gazette*, and further amends section 13(3) to clarify that conditions imposed in relation to an exemption include conditions subsequent.

Clause 6 deletes and substitutes subsection (1) of, and inserts a new subsection (1A) in, section 14 to provide for the relevant date on which the rate and valuation of goods is to be ascertained, for the purpose of determining the amount of customs duty or excise duty payable on the goods when a condition of an exemption relating to the goods has been contravened.

Clause 7 deletes subsection (3) of section 17, as exemptions from and refunds of special tax are to be provided for in the new section 17A (see clause 8). The clause further deletes and substitutes subsection (5) and inserts new subsections (5A) and (5B), to provide for the liability to the special tax when a motor vehicle is used or kept on a public road despite the Registrar of Vehicles (the Registrar) being notified that the motor vehicle would not be so used or kept. The clause also deletes and substitutes paragraph (b) of section 17(6) to clarify its intent, and inserts a new section 17(9) to define “tax period”, which is used in section 17 and the new section 17A.

Clause 8 inserts new sections 17A and 17B. The new section 17A provides for matters relating to exemptions from section 17 and other changes to special tax under section 17, including as a result of a change in the rate of the special tax (in particular, where the change in rate has effect for a tax period in which the date of commencement of the regulations prescribing the change in rate falls). The new section 17B provides for presumptions in relation to the special tax.

Clause 9 deletes and substitutes subsection (1) of section 18 to provide for consequential changes required as a result of the new section 17A.

Clause 10 repeals and re-enacts section 19 to clarify that claims for refunds for overpayments and erroneous payments are time-barred in accordance with section 19, and to extend the time-bar from one year to 5 years.

Clause 11 amends section 20(1), and inserts new subsections (1A) and (1B), to extend the time (from one year to 5 years) within which the Director-General must make a demand in relation to the short levy or erroneous refund of any customs duty, excise duty, tax, fee or other charge. The 5-year period does not apply if the short levy or erroneous refund was the result of fraud or evasion, and the Director-General may in that case make the demand at any time.

Clause 12 amends section 34(2)(d) to exclude motor fuel carried in the fuel supply tank of a vessel from the requirement of a removal permit. The reference to petroleum in section 34(2)(d) is also removed as it would be covered by “motor fuel” which is already referred to in that provision.

Clause 13 inserts a new subsection (1A) in section 38 to make it clear that the dutiable goods the import or export of which may be prohibited under section 38 for the purposes of the Act, include goods the import or export of which is already prohibited, absolutely or conditionally, under any other written law.

Clause 14 deletes and substitutes subsection (3) of, and inserts new subsections (3A), (3B) and (3C) in, section 42 to provide for an additional basis for the imposition of customs duty and excise duty, *viz.*, when any goods landed in a free trade zone are consumed in the free trade zone. The clause further clarifies the date on which customs duty and excise duty is calculated for the purposes of subsection (3). The clause also makes a consequential amendment to the section heading of section 42.

Clause 15 inserts a new subsection (3) in section 136 to make it clear that written permission may be given to a person in charge of a motor vehicle to leave Singapore in or with the motor vehicle, without contravening the section despite there being less motor fuel than has been prescribed in a fuel supply tank of the motor vehicle. This does not affect any liability of the person for having attempted to leave Singapore in contravention of section 136.

Clause 16 amends sections 11, 34(2)(c)(ii) and 136(1) to enable an officer of customs authorised by the Director-General, to exercise the powers in those provisions to waive payments or the recovery of payments of small amounts, to waive the requirement for a permit to remove certain goods, and to give the written permission, respectively.

Clause 17 deletes and substitutes paragraph (b) of section 17(2) of the Road Traffic Act to ensure parity with the special tax, so that the exemption from any tax under that provision of that Act for a vehicle that is not used or kept on a public road is the period for which the person liable to pay the tax has notified the Registrar that the vehicle will not be so used or kept.

Clause 18 validates the collection of certain amounts collected as, or purportedly as, customs duty or excise duty or a fee or the special tax under the Customs Act, or any tax under the Road Traffic Act.

Clause 19 provides for various saving and transitional matters, including empowering the Minister to make regulations to provide for refunds of the special tax following a reduction in the special tax rate on 20 February 2017 at 4.45 p.m.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
